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Attorneys for Defendants
 SELECT BRANDS, INC. and
 TARGET CORPORATION

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

THOMAS SPILSBURY, JR.	)	Case No.: CV 09 5955 JW
)	
Plaintiff,	)	DEFENDANTS' OPPOSITION TO
	)	PLAINTIFF'S MOTION TO QUASH
vs.	)	DEFENDANTS' SUBPOENA FOR
	)	THOMAS SPILSBURY'S CREDIT
	)	CARD RECORDS; DECLARATION
TARGET CORPORATION, SELECT	)	OF JULIET MACMILLIN LOMPA
BRANDS, INC, and DOES 1-25, inclusive,)	
	)	Hearing Date: April 5, 2011
Defendants.	)	Time: 10:00 a.m.
	)	Department: 2
	)	Complaint Filed: September 22, 2009

Plaintiff's Motion to Quash must be denied on the grounds that it is untimely and all objections have been waived. Plaintiff failed to bring his motion promptly, and the subject credit card records have already been produced to Defendants by the non-party witness, Chase Bank.¹ The subpoena at issue was served on Plaintiff's counsel on December 29, 2010, and he delayed for *six weeks*, until February 9, 2011, before seeking relief and filing this Motion to Quash.

Plaintiff's Motion should also be denied, because the subpoena seeks relevant records of Plaintiff's purchases at Target, purchases that Plaintiff has placed directly in issue. Further, neither Plaintiff nor Mr. Spilsbury has submitted a declaration of other evidence to support their claim that the subpoena requires disclosure of privileged or confidential matters or imposes an

¹ Chase Bank produced the records on February 16, 2011, two weeks before Judge Lloyd reset the hearing on Plaintiff's motion and indicated compliance with the subpoena was stayed.

undue burden on a third-party. These claims are inconsistent with Plaintiff's prior voluntary production of these credit card records. Finally, the subpoena was issued and served on Plaintiff's counsel on December 29, 2010, well before the discovery cut-off date, and the parties agreed this discovery shall be allowed in their signed Stipulation (Docket #69).

I. FACTUAL BACKGROUND

As part of his Initial Disclosure pursuant to Federal Rules of Civil Procedure Rule 26(a)(1)(A), Plaintiff Thomas Spilsbury produced a Washington Mutual credit card statement (now owned by Chase Bank), which contained purchases from July 16, 2008 to August 13, 2008 on credit card account number 5418-2280-0046-6005. See P00020, attached to Declaration of Juliet MacMillin Lompa, ¶2, Ex. 1 (hereinafter "Dec. JML"). According to Plaintiff, the July 25, 2008 credit card transaction at Target in the amount of \$136.76 was the transaction of his purchase of the Chefmate BL-10 blender that he contends caused his injuries ("The Blender"). *Id.* Based on the nature of the credit card transactions, it appears this credit card is used by Plaintiff. *Id.*

During the discovery process, Plaintiff produced what he claimed was the accident blender "The Blender" on two occasions, initially at Plaintiff's deposition at which point it was marked as Exhibit 4, and then again in response to Defendants' Demand for Inspection by Defendants' expert. Plaintiff also produced photographs of "The Blender" that he claims caused his injuries in response to a Request for Production of Documents. Dec. JML, ¶3.

During the discovery process, Defendants discovered that "The Blender" produced by Plaintiff was not manufactured until sometime after the accident. Defendants had a good faith belief that Plaintiff had knowingly produced a subsequently manufactured blender as "The Blender" that caused his injuries. Dec. JML, ¶4.

On November 10, 2010, TARGET and SELECT BRANDS filed a Motion for Summary Judgment on the grounds that it is impossibility for "The Blender" to have caused Plaintiff's injuries as that blender with its revised design did not even exist until after the subject accident. The blender produced by Plaintiff as the accident blender has design features that were not incorporated into the BL-10 until October 2008, weeks after Plaintiff's accident. Moreover, the date of manufacture on "The Blender" (stamped onto all Chefmate BL-10 blenders on a power

cord plug prong) showed that the blender was not even assembled until mid October 2008, almost three weeks after Plaintiff's accident. See Docket Nos. 39-46; Decl. JML, ¶15.

In a letter dated December 14, 2010, plaintiff stated for the first time that Defendants' Motion related to his client's "misidentification" of the accident blender. Dec. JML, ¶16. During the next 30-days, Defendants' counsel made numerous written requests to Plaintiff's counsel that he provide an explanation as to how this "misidentification" occurred. Plaintiff ignored these requests for an explanation. *Id.*

On January 21, 2011, the discovery cut-off date, Plaintiff's counsel sent to Defendants a Declaration from Plaintiff wherein he provided a new story about having "misidentified" "The Blender", which stated as follows: "Upon reflection, I have determined that following the September 30, 2008, accident, I was provided with a blender to use when I was home in the San Jose area. This blender was virtually identical to the Chefmate blender that injured my hand. It is my belief that this is the blender I mistakenly delivered to my attorney's office." See Docket #85; Dec. JML, ¶11.

Plaintiff has placed at issue other purchases of Chefmate blenders, particularly those that follow the September 30, 2008 accident.

I. PLAINTIFF HAS WAIVED ALL OBJECTIONS: PLAINTIFF UNREASONABLY DELAYED AND THE RECORDS WERE PRODUCED IN FEBRUARY

On December 29, 2010, 23 days before the discovery cut-off date, Defendants caused two subpoenas to be issued and served on Plaintiff's counsel: 1) for plaintiff's academic records from the college he currently attends; and 2) for the Washington Mutual credit card statements [now Chase Bank] addressed to plaintiff's father for statements from July 1, 2008 through July 15, 2009, credit card account number 5418-2280-0046-6005, the same credit card records that Plaintiff had voluntarily produced in his Initial Disclosures.² Dec. JML, ¶13 and Ex. 2.

A motion to quash or for a protective order is the only way for a party to prevent disclosure where the subpoenaed witness is otherwise willing to produce the records voluntarily. Any such

² At the request of Chase Bank, the subpoena was reissued in the name Chase Bank, USA N.A. Credit Cards, instead of J.P. Morgan Chase Bank, but the address information was the same. This caused the production date to be changed to February 14, 2011. Dec. JML, ¶18; see Ex. A to Plaintiff's Motion, Docket #100, page 6.

1 motion *must be made promptly*, because it **must be heard and granted** before the scheduled
2 deposition. King v. Fidelity Nat'l Bank of Baton Rouge (5th Cir. 1983) 712 F.2d 188, 191
3 (emphasis added). Here, Plaintiff unreasonably delayed for six weeks before filing his motion.
4 His failure to act promptly has resulted in a waiver of all objections. Plaintiff has not offered any
5 explanation as to why he did not timely move to quash this discovery.

6 On January 18, 2011, twenty (20) days after service of the subpoena, Plaintiff's counsel
7 sent Defendants' counsel a meet and confer letter. Plaintiff's counsel indicated that if both
8 subpoenas were not withdrawn, he would immediately move to quash each subpoena. *See*
9 January 18, 2011 Letter from McMahon, Dec. JML, ¶19, Ex. 3.

10 Plaintiff did not take any further action for an additional 22 days, when he filed this Motion
11 on February 9, 2011. Due to the long passage of time and Plaintiff's failure to take any action
12 before the production date for the Chase documents, Defendants assumed Plaintiff had withdrawn
13 his objections to the subpoena. Dec. JML, ¶12.

14 On February 16, 2011, Defendants received the subpoenaed credit card records from Chase
15 Bank and they are being used in an ongoing investigation. Dec. JML, ¶12.

16 **II. THE RECORDS SOUGHT ARE RELEVANT AND DISCOVERABLE AND**
17 **THE SUBPOENA IS THE ONLY WAY TO OBTAIN THE INFORMATION**

18 Although Plaintiff's motion is moot due to the fact Defendants are already in receipt of the
19 subpoenaed credit card records from Chase Bank, Defendants address the issues raised by
20 Plaintiff, including a discussion of the relevance of the records requested by the subpoena.

21 Plaintiff's counsel advised Defendants that Plaintiff had "misidentified" the accident
22 blender on December 14, 2010, but refused to provide any explanation regarding this alleged
23 "misidentification" until January 21, 2011, the discovery cut-off date.

24 Defendants issued the subject subpoena due to their interest in discovery Plaintiff's other
25 Target purchases, a highly relevant issue. In Plaintiff's moving papers, he incorrectly assumes the
26 subpoena to Chase Bank was to obtain information regarding plaintiff's July 25, 2008 purchase of
27 a Chefmate blender, a blender that has never been produced in this lawsuit. Defendants are
28 interested in discovering other purchases of blenders.

1 On January 19, 2011, Plaintiff conducted a deposition of Target's Person Most
2 Knowledgeable regarding the date ranges when Exhibit 4, "The Blender" produced by Plaintiff at
3 his deposition and for inspection by Defendants' expert, was sold, the store from which Exhibit 4
4 was sold, as well as Target's distribution and sale of Chefmate blenders with date code 4208, the
5 same date code as "The Blender" produced by Plaintiff. Plaintiff sought information regarding
6 Target's ability to track the sale and purchase of Plaintiff's Exhibit 4 blender and of Chefmate
7 blenders with the same date code as Exhibit 4. Target produced Monica Carawan, its
8 merchandise flow senior manager, as its person most knowledgeable. Ms. Carawan was
9 questioned regarding Target's distribution of Chefmate blenders with the same date code as
10 Exhibit 4 from Target's Distribution Center to stores in the San Jose area and the Monterey area
11 from the date of import through January 30, 2009. Plaintiff inquired as to how Target could trace
12 the sale of The Blender (Exhibit 4) and learned that Target has the ability to trace purchases
13 through a customer's credit card information. Plaintiff also inquired regarding Target's customer
14 relations policies, including the fact that Target will not conduct a search of a customer's credit
15 card transactions, e.g., Thomas Spilsbury's credit card transactions, absent the customer's consent
16 or a Court order. Dec. JML, ¶10.

17 Thus, absent Mr. Spilsbury's signed Consent, which he has refused to provide, or a Court
18 order, the subject subpoena is the only way for Defendant to obtain information regarding
19 Plaintiff's other purchases at Target. See Dec. JML, ¶13.

20 On January 21, 2011, Plaintiff submitted a declaration wherein he provided a new story
21 about how he "misidentified" the Chefmate blender he had twice produced in discovery as "The
22 Blender" involved in the accident: "Upon reflection, I have determined that following the
23 September 30, 2008, accident, I was provided with a blender to use when I was home in the San
24 Jose area. This blender was virtually identical to the Chefmate blender that injured my hand. It is
25 my belief that this is the blender I mistakenly delivered to my attorney's office." Docket #85; Dec.
26 JML, ¶11.

27 Plaintiff's new story has placed at issue other purchases of Chefmate blenders, particularly
28 those that follow the September 30, 2008 accident.

A. Plaintiff's Assertion the Subpoena Requires Disclosure of Privileged/Confidential Matters is Belied by his Voluntary Production of the Credit Card Records

Plaintiff voluntarily produced the credit card records Defendants have subpoenaed. *See* Dec. JML, Ex. 1. Thus, any privacy interest that existed with respect to this particular credit card during the relevant time period has been waived. Plaintiff did not produce a copy of the Target receipt for the July 25, 2008 purchases until January 21, 2011, the discovery cut-off date, and previously relied on the credit card statement, Ex. 1 as the only evidence of his purchase of a Chefmate blender.

Defendants issued a narrowly tailored subpoena for the subject credit card records for purchases during a one year period, from July 1, 2008 through July 15, 2009, after Plaintiff's counsel indicated that Plaintiff's production of "The Blender" was the result of "misidentification". Thus, plaintiff has put into issue other Target purchases of blenders, and Defendants' subpoena properly seeks information relevant to the subject matter involved in the action. FRCP 26(b)(1).

On February 14, 2010, Defendants' counsel corresponded with Plaintiff's counsel and explained the highly relevant nature of the subpoenaed records to discover Plaintiff's other purchases at Target. Defendants offered to alleviate any privacy concerns by agreeing to withdraw the subject subpoena in exchange for Mr. Spilsbury's signed consent authorizing Target to conduct a search of his credit card transactions from June 1, 2008 through July 30, 2009. Plaintiff never responded to this offer. Dec. JML, ¶13, Ex. 4.

Plaintiff does not claim that the subject credit card records are not a proper subject of discovery, nor does he cite any authority that bars discovery of these records. Moreover, none of the authority cited by Plaintiff supports his position that Plaintiff or Mr. Spilsbury is entitled to a protective order or that the records are confidential. Plaintiff contends Defendant may not discover the subject credit card records absent a showing of "a compelling public interest", and relies on Ragge v. MCA/ Universal Studios, 165 F.R.D. 601 (C.D. Cal. 1995) in support of this contention.

1 Ragge does not support this contention, and in fact, supports Defendants' position entitling
2 them to discover the credit card records. In Ragge, Plaintiff was seeking to discover various
3 employees' personnel files of Defendant. The court held that the plaintiff could discover specific
4 items she had requested, such as files pertaining to the defendants' promotions and demotions,
5 disciplinary proceedings, work performance reviews, and employee and customer complaints. *Id.*
6 at 605. The Ragge court noted that Rule 26 is liberally construed to permit discovery of all
7 information reasonably calculated to lead to the discovery of admissible evidence, even if the
8 discoverable information is not admissible at trial.

9 Plaintiff also relies on Schnabel v. Superior Court (1993) 5 Cal.4th 704, in support of his
10 contention that a third party witness is "presumptively entitled to a protective order to limit
11 disclosure of his or her financial information." In Schnabel, a marriage dissolution case, the Court
12 allowed one spouse to discover the tax records of a closely held corporation which is not a party to
13 the litigation but in which both litigants had an interest. In reaching its decision to allow the
14 discovery of the financial information, the Court found two factors were paramount, "the need for
15 the requested information to help resolve the issues that remain between the spouses, and the
16 relationship between the spouses and [the third party]." *Id.* at 714. The reasoning of the Schnabel
17 court supports allowing defendants to discover the credit card records here. Plaintiff has placed
18 into issue other purchases at Target, and Defendants are unable to obtain information regarding
19 these purchases other than through this subpoena. Plaintiff has refused to consent to allow Target
20 to search of his credit card transactions. Moreover, the relationship at issue here is Plaintiff and
21 his father, and a credit card that Plaintiff has full access to. In examining the privacy interests of
22 the third party, the Court held that there "was no specific showing of the privacy interests of the
23 majority shareholder or of damage the corporation might suffer from disclosure of confidential
24 information." *Id.* at 718.

25 Plaintiff has not submitted a declaration from Thomas Spilsbury Sr. or from Plaintiff
26 objecting to the subject subpoena. Plaintiff's counsel is not a proper affiant to assert a privacy
27 objection. Moreover, Mr. Spilsbury and Plaintiff had the opportunity to alleviate any potential
28 privacy concerns by simply signing a consent authorizing Target to conduct a search of his credit

1 card transactions from June 1, 2008 through July 30, 2009, which was offered by Defendant. Dec.
2 JML, ¶13.

3 **III. THE SUBPOENA WAS ISSUED WELL IN ADVANCE OF CUT-OFF DATE**
4 **AND PLAINTIFF HAS ACKNOWLEDGED THE SUBPOENA IS SUBJECT**
5 **TO THE PARTIES' STIPULATION**

6 On December 29, 2010, 23 days before the discovery cut-off date, Defendants caused two
7 subpoenas to be issued and served on Plaintiff's counsel: 1) for plaintiff's academic records from
8 the college he currently attends; and 2) for the Washington Mutual credit card statements [now
9 Chase Bank] addressed to plaintiff's father for statements from July 1, 2008 through July 15,
10 2009.³ Dec. JML, ¶7, Ex. 2.

11 On January 11, 2011, the parties entered into a Stipulation to modify the completion of
12 various discovery, including Defendants' subpoena issued to Chase Bank. The Stipulation stated in
13 pertinent part: "WHEREAS Defendants have served deposition notices of various witnesses and
14 subpoenas for records on or before the designated discovery cut off . . . IT IS THEREFORE
15 STIPULATED, AGREED AND JOINTLY REQUESTED BY THE PARTIES . . . "[a]ll expert
16 depositions, pending noticed depositions, and written discovery is continued, and is to be
17 commenced after February 28, 2011 and will be completed on or before sixty days (60 days) after
18 this Court's ruling on the Motion for Summary Judgment" (2:12-13, 2:23-24, 3:8-11, Stipulation,
19 Docket #69).⁴ Dec. JML, ¶9.

20 Plaintiff's counsel acknowledged Defendants' subpoenas were subject to the parties'
21 stipulation, as he articulated this understanding in his January 18, 2011, meet and confer letter to
22 Defendants' counsel: "[Y]ou are aware that we recently stipulated to continue all 'written
23 discovery' until after the motion for summary judgment is heard . . . Undoubtedly each document
24 subpoena would constitute 'written discovery' subject to our stipulation." (¶4, January 18, 2011
25 Letter from McMahon, Dec. JML, ¶9, Ex. 3. Thus, it is clear the parties intended document
26 subpoenas to relate back to the original date of service.

27 ³ The subpoena issued to CSUMB on December 29, 2010, had a production date of January 21, 2011, and it is
28 unknown when the subpoena issued to Chase on the same date had a production date of January 26, 2011.

⁴ Note that the Court declined to grant the parties' request, but the stipulation is important to show Plaintiff's
inconsistent position and Defendants' meet and confer efforts.


1 **IV. CONCLUSION**

2 It is respectfully requested the Court deny Plaintiff's Motion to Quash on the grounds that
3 it is untimely and all objections have been waived. Plaintiff's Motion should also be denied pm
4 the grounds that Plaintiff previously voluntarily produced the same credit card records in support
5 of his claim and objections are waived. Further, the subpoena seeks relevant records of Plaintiff's
6 purchases at Target, purchases that Plaintiff has placed directly in issue. Finally, the subpoena was
7 issued and served on Plaintiff's counsel on December 29, 2010, well before the discovery cut-off
8 date, and the parties agreed this discovery shall be allowed in their signed Stipulation.

9 DATED: March 14, 2011

STONE & ASSOCIATES

10
11 By


JULIET MACMILLIN LOMPA
Attorneys for Defendants
SELECT BRANDS, INC. and
TARGET CORPORATION

DECLARATION OF JULIET MACMILLIN LOMPA

I, Juliet MacMillin Lompa, declare,

1. I am an attorney duly licensed to practice law in the State of California and I am associated with Stone & Associates, A Professional Corporation, attorneys of record for defendant Select Brands, Inc. I have personal knowledge of the matters stated herein, unless otherwise stated, to be based upon information and belief, and I could and would testify thereto under penalty of perjury.

2. As part of his Initial Disclosure pursuant to Federal Rules of Civil Procedure Rule 26, plaintiff produced a Washington Mutual credit card statement, which contained purchases from July 16, 2008 to August 13, 2008 on credit card account number 5418-2280-0046-6005. Based on information and belief, these records pertain to Plaintiff's credit card purchases. Chase Bank is the custodian of these records. According to Plaintiff, the July 25, 2008 credit card transaction at Target in the amount of \$136.76 is the transaction of his purchase of the Chefmate BL-10 blender that he contends caused his injuries. A true and correct copy of the Credit Card statement, Bates No. TC000020, is attached hereto as Exhibit 1.

3. During the discovery process, Plaintiff produced what he claimed was the accident blender "The Blender" on two occasions, initially at Plaintiff's deposition at which point it was marked as Exhibit 4, and then again in response to Defendants' Demand for Inspection by Defendants' expert. Plaintiff also produced photographs of "The Blender" that he claims caused his injuries in response to a Request for Production of Documents.

4. During the discovery process, Defendants discovered that "The Blender" produced by Plaintiff was not manufactured until sometime after the accident. Defendants had a good faith belief that Plaintiff had knowingly produced a subsequently manufactured blender as "The Blender" that caused his injuries.

5. On November 10, 2010, Defendants Target and Select Brands filed a Motion for Summary Judgment on the grounds that it is impossibility for "The Blender" to have caused Plaintiff's injuries as that blender with its revised design did not even exist until after the subject accident. The blender produced by Plaintiff as the accident blender has design features that were

1 not incorporated into the BL-10 until October 2008, weeks after Plaintiff's accident. Moreover, the
2 date of manufacture on "The Blender" (stamped onto all Chefmate BL-10 blenders on a power
3 cord plug prong) showed that the blender was not even assembled until mid October 2008, almost
4 three weeks after Plaintiff's accident.

5 6. In a letter dated December 14, 2010, plaintiff stated for the first time that Defendants'
6 Motion related to his client's "misidentification" of the accident blender. During the next 30-days,
7 Defendants' counsel made numerous written requests to Plaintiff's counsel that he provide an
8 explanation as to how this "misidentification" occurred. Plaintiff ignored these requests for an
9 explanation.

10 7. On December 29, 2010, Defendants caused two subpoenas to be issued and served on
11 Plaintiff's counsel: 1) for Plaintiff's academic records from California State University, Monterey
12 Bay; and 2) for the Washington Mutual credit card statements addressed to plaintiff's father for the
13 time period July 1, 2008 through July 15, 2009 on credit card account number 5418-2280-0046-
14 6005, the same credit card records that Plaintiff had voluntarily produced in his Initial Disclosures.
15 The subpoenas were served on Plaintiff's counsel on December 29, 2010. True and correct copies
16 of these subpoenas are collectively attached hereto as Exhibit 2.

17 8. At the request of Chase Bank, the subpoena to it was reissued in the name Chase Bank,
18 USA N.A. Credit Cards, instead of J.P. Morgan Chase Bank, but the address information was the
19 same. This caused the production date to be changed to February 14, 2011. (See Exhibit A to
20 Plaintiff's Moving papers.)

21 9. On January 11, 2011, the parties entered into a Stipulation to modify the completion of
22 specified discovery, including Defendants' subpoena issued to Chase Bank (Docket #69). In
23 entering into the stipulation, I intended document subpoenas to relate back to the original date of
24 service. Clearly Plaintiff's counsel understood that Defendants' subpoenas were subject to the
25 stipulation, as he articulated this understanding in his January 18, 2011, meet and confer letter to
26 me when he stated, "you are aware that we recently stipulated to continue all 'written discovery'
27 until after the motion for summary judgment is heard Undoubtedly each document subpoena
28

1 would constitute "written discovery" subject to our stipulation." A true and correct copy of
2 Plaintiff's counsel's January 18, 2011 letter is attached hereto as Exhibit 3. Interestingly,
3 Plaintiff's counsel sent this meet and confer letter at a time he was aware I was in Minneapolis for
4 the depositions scheduled the next day.

5 10. On January 19, 2011, Plaintiff conducted a deposition of Target's Person Most
6 Knowledgeable regarding the date ranges when Exhibit 4, "The Blender" produced by Plaintiff at
7 his deposition and for inspection by Defendants' expert, was sold, the store from which Exhibit 4
8 was sold, as well as Target's distribution and sale of Chefmate blenders with date code 4208, the
9 same date code as "The Blender" produced by Plaintiff. Plaintiff sought information regarding
10 Target's ability to track the sale and purchase of Plaintiff's Exhibit 4 blender and of Chefmate
11 blenders with the same date code as Exhibit 4. Target produced Monica Carawan, its
12 merchandise flow senior manager, as its person most knowledgeable. Ms. Carawan was
13 questioned regarding Target's distribution of Chefmate blenders with the same date code as
14 Exhibit 4 from Target's Distribution Center to stores in the San Jose area and the Monterey area
15 from the date of import through January 30, 2009. Plaintiff inquired as to how Target could trace
16 the sale of The Blender (Exhibit 4) and learned that Target has the ability to trace purchases
17 through a customer's credit card information. Plaintiff also inquired regarding Target's customer
18 relations policies, including the fact that Target will not conduct a search of a customer's credit
19 card transactions, e.g., Thomas Spilsbury's credit card transactions, absent the customer's consent
20 or a Court order. Thus, absent Mr. Spilsbury's signed Consent, or a Court order, the subject
21 subpoena is the only way for Defendant to obtain information regarding Plaintiff's other purchases
22 at Target.

23 11. On January 21, 2011, the discovery cut-off date, Plaintiff's counsel sent to Defendants
24 a Declaration from Plaintiff wherein he provided a new story about having "misidentified" "The
25 Blender", which stated as follows: "Upon reflection, I have determined that following the
26 September 30, 2008, accident, I was provided with a blender to use when I was home in the San
27 Jose area. This blender was virtually identical to the Chefmate blender that injured my hand. It is
28 my belief that this is the blender I mistakenly delivered to my attorney's office."

1 12. Plaintiff did not take any action to obtain a protective order or other relief regarding
2 the subpoena for Mr. Spilsbury's Chase Bank records for six weeks. After he sent his meet and
3 confer letter, he waited more than three weeks before even filing the Motion to Quash on
4 February 9, 2011. Due to the long passage of time and Plaintiff's failure to take any action before
5 the production date for the Chase documents, I assumed Plaintiff had withdrawn his objections.
6 Plaintiff failed to obtain relief timely waived all objections since on February 16, 2011, I received
7 and reviewed the subpoenaed credit card records from Chase Bank, and the records are being used
8 in an ongoing investigation.

9 13. On February 14, 2010, after receiving Plaintiff's Motion, I sent Plaintiff's counsel a
10 meet and confer letter wherein I explained the highly relevant information Defendants were
11 seeking to discover, Plaintiff's other purchases at Target. In order to alleviate any privacy
12 concerns, I offered to withdraw the subject subpoena in exchange for Mr. Spilsbury's signed
13 consent authorizing Target to conduct a search of his credit card transactions from June 1, 2008
14 through July 30, 2009. A true and correct copy of this letter and the proposed Consent is attached
15 hereto as Exhibit 4. Plaintiff did not respond to this offer.

16 Executed on this 14th day of March, 2011, at Walnut Creek, California.

17
18 
19 JULIET MACMILLIN LOMPA

EXHIBIT “1”

WDC 1402 JTB

1 1 10 000015

PAGE 1 of 1

COLR2040 H000

01AB6092 30070730

Important Messages

Summer fun left you short on cash? No problem, just use checks to access your credit line and get the cash you need.

Thinking about refinancing or purchasing a new home? Our experienced Home Loan Consultants are here to help. Just stop by one of over 2,000 WaMu branches or call 866.353.7196. We look forward to hearing from you. Not sure if there is a WaMu branch near you? Visit wamu.com to search for one in your area.

Account Summary

Account Number	5418-2280-0046-6005	Previous Balance	\$1,703.25
Statement Closing Date	08/15/08	Credits & Payments	\$1,703.25
Minimum Payment of \$33.00	due by 09/11/08	Purchases & Other Charges	\$1,074.65
Credit Line	\$8,500.00	Cash Advances	\$0.00
Available Credit Line as of 08/15/08	\$7,425.45	FINANCE CHARGE	\$0.00
Available Credit for Cash Advances as of 08/15/08	\$2,550.00	NEW BALANCE	\$1,074.55
Days in Current Billing Cycle	29		

Transactions

Date	Description	Amount
Jul 18	DISNEY-MAIN ENTRANC ANAHEIM CA	\$182.00
Jul 18	ESPN ZONE-ANAHEIM REST ANAHEIM CA	\$38.37
Jul 18	APL*ITUNES 866-712-7753 CA	\$1.98
Jul 19	UNION 76 10014231 LOS GATOS CA	\$100.00
Jul 22	APL*ITUNES 866-712-7753 CA	\$0.99
Jul 24	WALGREENS #7326 Q03 LOS GATOS CA	\$26.52
Jul 24	CHEVRON 0307516 LOS GATOS CA	\$100.00
Jul 25	TARGET 000019273 SAN JOSE CA	\$136.76
Jul 26	MERVYNS 00000042 SAN JOSE CA	\$28.56
Jul 26	BARNES & NOBLE #290Q90 SAN JOSE CA	\$16.18
Jul 27	GUADALUPE LANDFILL SAN JOSE CA	\$41.41
Jul 28	UNION 76 10032381 LOS GATOS CA	\$95.73
Jul 28	MR PICKLES SANDWICH SH LOS GATOS CA	\$6.99
Jul 29	THE SPORTS AUTHORITY # SANTA CLARA CA	\$97.43
Aug 01	APL*ITUNES 866-712-7753 CA	\$0.99
Aug 04	PAYMENT RECEIVED -- THANK YOU	\$(1,703.25)
Aug 10	APL*ITUNES 866-712-7753 CA	\$4.99
Aug 11	WALGREENS #7326 Q03 LOS GATOS CA	\$20.33
Aug 12	HOLLYWOOD GAME CRAZY LOS GATOS CA	\$54.94
Aug 12	RITE AID STORE 5972 LOS GATOS CA	\$51.19
Aug 13	UNION 76 10034510 LOS GATOS CA	\$69.19

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE OF PAGE 1.

Balance Category

	Average Daily Balance	Daily Periodic Rate	Corresponding APR	Finance Charges	Grace Terms
Purchase - Current Cycle	\$759.35	.0534%*	19.49%*	\$0.00	Term A
Cash - Current Cycle	\$0.00	.0787%*	28.74%*	\$0.00	Term B
Effective ANNUAL PERCENTAGE RATE (APR): 0.00%				*These rates may vary.	

The Corresponding APR is the rate of interest you pay when you carry a balance on purchases or cash advances. The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfer fees - expressed as a percentage.

For 24-hour Automated Account Information, please call 1-866-892-WAMU(9268) or visit us at www.wamucards.com
Your account is issued by Washington Mutual Bank, Henderson, NV.

TC000020

EXHIBIT “2”

US Legal Support Inc.

4232-1 Las Virgenes Road, Suite 100

Calabasas, CA 91302-3591

Phone: (818) 878-9227 / Fax: (818) 878-9851

Toll Free: (800) 600-7788

Received

JAN 3 2011

CONFIRMATION LETTER

12/29/2010

Order By:

Juliet M. Lompa, Esq.

Stone & Associates

2125 Ygnacio Valley Road, Suite 101

Walnut Creek, CA 94598

Attention: Barbara Burkhardt

Bill To:

Stone & Associates

Attention: Juliet M. Lompa, Esq.

Claim No.: 30684 Spilsbury

D.O.L.: 09/30/2008

Insured: Select Brands; Target Corporation

Dear Barbara Burkhardt,

We have received your request for records for the below named individual and your order is being processed. Please verify all of the information below regarding Thomas Spilsbury and contact us if there are any changes you would like to make. Thank you for your time and the opportunity to serve you.

Records On: Thomas Spilsbury

Case Number: CV 09 5955 JW

Case Name: Thomas Spilsbury, Jr.

vs.

Target Corporation

File No.: 30684 Spilsbury

Rush Order: Y

Locations/Instructions

1 - Processed: 12/29/2010

California State University - Monterey Bay

100 Campus Center, Building 47, Seaside, CA 93955-8001

Obtain all academic records.

1 Thomas Spilsbury, Jr.,) Case No.: CV 09 5955 JW
2 vs.) Plaintiff(s),)
3 Target Corporation,) **PROOF OF SERVICE BY MAIL**
4 Defendant(s),)
5)
6)
7)
8)
9)
10)

11 I, Angie Salvatierra, am and was on the date mentioned herein, is over the age of eighteen years and
12 not a party to the within entitled action.

13 **My business address is: US Legal Support Inc.**
14 **4232-1 Las Virgenes Road, Suite 100**
15 **Calabasas, CA 91302-3591**

16 **On 12/29/2010 I served true copies of the following documents:**

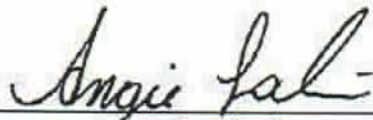
17 **Subpoena**

18 To each party appearing in this action, at the address below, by placing true copies thereof enclosed
19 in a sealed envelope in which I mailed to the addressee(s) below with postage fully pre-paid, in the United
20 States Mail.

21 **Timothy D. McMahon, Esq.**
22 **Corsiglia, McMahon & Allard, LLP**
23 **96 North 3rd Street, Suite 620**
24 **San Jose, CA 95112**
25 **(408) 289-1417 Fax: (408) 289-8127**

26 I declare under penalty of perjury under the laws of the United States and the State of California that
27 the foregoing is true and correct.

28 /s/



Angie Salvatierra
U.S. Legal Support, Inc.

UNITED STATES DISTRICT COURT

for the
NORTHERN District of CALIFORNIAThomas Spilsbury, Jr.,

Plaintiff

Vs.

Target Corporation,

Defendant

Civil Action No.: CV 09 5955 JW

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISESCalifornia State University - Monterey Bay
To: 100 Campus Center, Building 47
Seaside, CA 93955-8001☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Any and all documents and records, and all writings, including, but not limited to, scholastic records, absence records, incident reports, teacher comments, report cards, transcripts, admission records, applications, all office and disciplinary records, pertaining to Thomas Spilsbury; DOB: 12/11/1989; SSN: UNKNOWN.

Place: California State University - Monterey Bay
100 Campus Center, Building 47
Seaside, CA 93955-8001Date and Time:
01/21/2011 9:00AM☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry on the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/29/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy ClerkJuliet M. Lompa, Esq.

Attorney's Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Juliet M. Lompa, Esq., SBN. 140980 Stone & Associates, 2125 Ygnacio Valley Road, Suite 101, Walnut Creek, CA 94598, Phone: (925) 938-1555

Civil Action No. CV 09 5955 JW

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for (name of individual and title, if any) California State University - Monterey Bay
was received by me on (date) _____

☒ I personally served the subpoena on the individual at (place) 100 Campus Center, Building 47, Seaside,
CA 93955-8001 on (date) _____; or

☐ I returned the subpoena unexecuted because _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered
to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), and (e), (Effective 12/1/07)**(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction ^M which may include lost earnings and reasonable attorney's fees ^M on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises ^M or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person ^M except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be other wise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may none the less order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45 (c) (3) (A) (ii)

JAN 3 2011

30684 Spilbury

CONFIRMATION LETTER

12/29/2010

Order By:

Juliet M. Lompa, Esq.

Stone & Associates

2125 Ygnacio Valley Road, Suite 101

Walnut Creek, CA 94598

Attention: Barbara Burkhardt

Bill To:

Stone & Associates

Attention: Juliet M. Lompa, Esq.

Claim No.: 30684 Spilbury

D.O.L.:

Insured: Select Brands; Target Corporation

Dear Barbara Burkhardt,

We have received your request for records for the below named individual and your order is being processed. Please verify all of the information below regarding Thomas Spilbury, Sr. and contact us if there are any changes you would like to make. Thank you for your time and the opportunity to serve you.

Records On: Thomas Spilbury, Sr.

Case Number: CV 09 05955 JW

Case Name: Thomas Spilbury, Jr.

vs.

Target Corporation

File No.: 30684 Spilbury

Rush Order: Y

Locations/Instructions

1 - Processed: 12/29/2010

J.P. Morgan Chase Bank

818 West Seventh Street, Los Angeles, CA 90017

Obtain all credit card statements for Washington Mutual Credit Card Account Number: 5418-2280-0046-6005 for third party witness Thomas Spilbury, Sr. (Plaintiff's father), from 07/01/2008 to 07/15/2009.

UNITED STATES DISTRICT COURT

for the
CENTRAL District of CALIFORNIA

Thomas Spilsbury, Jr.,

Plaintiff

Vs.

Target Corporation,

Defendant

Civil Action No.: CV 09 05955 JW

(If the action is pending in another district, state where:)
Northern District of CaliforniaSUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISESJ.P. Morgan Chase Bank
To: 818 West Seventh Street
Los Angeles, CA 90017

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Any and all credit card statements for Washington Mutual Credit Card Account Number: 5418-2280-0046-6005 for third party witness Thomas Spilsbury, Sr. (Plaintiff's father), from 07/01/2008 to 07/15/2009.

Place: Pasadena - U.S. Legal Support, Inc.
127 North Madison Avenue, Suite 101
Pasadena, CA 91101Date and Time:
01/26/2011 9:00AM

Inspection of Premises: **YOU ARE COMMANDED** to permit entry on the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/29/2010

CLERK OF COURT

OR



Juliet M. Lompa, Esq.

Signature of Clerk or Deputy Clerk

Attorney's Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) **Select Brands; Target Corporation**, who issues or requests this subpoena, are: **Juliet M. Lompa, Esq., SBN. 140980** Stone & Associates, 2125 Ygnacio Valley Road, Suite 101, Walnut Creek, CA 94598, Phone: (925) 938-1555

1 Thomas Spilsbury, Jr.,) Case No.: CV 09 05955 JW
2) Plaintiff(s),)
3 vs.) **PROOF OF SERVICE BY MAIL**
4 Target Corporation,)
5) Defendant(s),)
6)
7)
8)
9)
10)

11 I, Angie Salvatierra, am and was on the date mentioned herein, is over the age of eighteen years and
12 not a party to the within entitled action.

13 **My business address is: US Legal Support Inc.**
14 **4232-1 Las Virgenes Road, Suite 100**
15 **Calabasas, CA 91302-3591**

16 **On 12/29/2010 I served true copies of the following documents:**

17 **Subpoena**

18 To each party appearing in this action, at the address below, by placing true copies thereof enclosed
19 in a sealed envelope in which I mailed to the addressee(s) below with postage fully pre-paid, in the United
20 States Mail.

21 **Timothy D. McMahon, Esq.**
22 **Corsiglia, McMahon & Allard, LLP**
23 **96 North 3rd Street, Suite 620**
24 **San Jose, CA 95112**
25 **(408) 289-1417 Fax: (408) 289-8127**

26 I declare under penalty of perjury under the laws of the United States and the State of California that
27 the foregoing is true and correct.

28 */s/ Angie Salvatierra*
Angie Salvatierra
U.S. Legal Support, Inc.

Civil Action No. CV 09 05955 JW

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for (name of individual and title, if any) J.P. Morgan Chase Bank
 was received by me on (date) _____

☒ I personally served the subpoena on the individual at (place) 818 West Seventh Street, Los Angeles, CA 90017 on (date) _____; or

☐ I returned the subpoena unexecuted because _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), and (e), (Effective 12/1/07)**(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction ^M which may include lost earnings and reasonable attorney's fees ^M on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises ^M or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person ^M except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45 (c) (3) (A) (ii)

EXHIBIT “3”



CORSIGLIA
McMAHON &
ALLARD

BRADLEY M. CORSIGLIA
TIMOTHY D. McMAHON
B. ROBERT ALLARD

MARK A. SIGALA

OF COUNSEL
NORMAN W. SAUCEDO

January 18, 2011

SENT VIA U.S. MAIL, FACSIMILE AND E-MAIL

Juliet MacMillin Lompa, Esq.
Stone & Associates
2125 Ygnacio Valley Road, Suite 101
Walnut Creek, CA 94598

Re: Spilsbury v. Target Stores, et al.

Dear Counsel:

We are in receipt of subpoenas issued by your office for my client's school records as well as Thomas Spilsbury, Sr.'s bank account records, each of which requires production on January 21, 2011, and January 26, 2011, respectively. We object to each subpoena and request that they be withdrawn immediately otherwise we will have no choice but to move the court to quash each subpoena.

First, at the time the subpoenas were issued, the discovery cut off in this case was January 21, 2011. As a consequence, the bank record subpoena issued to J.P. Morgan Chase is invalid *ab initio* since it seeks discovery beyond the court ordered discovery cut off.

Second, you are aware that we recently stipulated to continue all "... written discovery" until after the motion for summary judgment is heard on February 28, 2011. (Docket 69.) Undoubtedly each document subpoena would constitute "written discovery" subject to our stipulation and order. Alternatively, they would be in violation of the discovery cut off. Either way, they are improper at this time.

Third, each subpoena seeks records in violation of statutory limitations with respect to the discovery of a party's private educational records (20 USC § 1232g) and a third-party's private financial records (12 USC. § 1301). In light of these statutory protections, a copy of this correspondence has been sent to both Cal-State University and J.P. Morgan Chase in order to place them on formal notice of plaintiff's and his father's objection to production of these private, statutorily protected records absent consent an order of the court.

Juliet MacMillin Lompa, Esq.
January 18, 2011
Page 2

Finally, both of the subpoenas seek records in violation of general discovery limitations with respect to private education and financial records and limitations on the discovery of information irrelevant to the claims and defenses herein.

In light of the foregoing, please acknowledge your withdrawal of each subpoena on or before the close of business on **Wednesday, January 19, 2011**. If I do not hear back from you by this time, I will have no choice but to immediately move to quash each subpoena.

I look forward to hearing from you.

Very truly yours,

Dictated but not read

TIMOTHY D. McMAHON

TDM

cc: Thomas Spilsbury, Jr.
Thomas J. Spilsbury, Sr.

cc: California State University-Monterey Bay
100 Campus Center, Building 47
Seaside, Ca. 93955-8001

cc: J.P. Morgan Chase Bank
818 West Seventh Street
Los Angeles, CA. 90017

EXHIBIT “4”

COLETTE F. STONE
JENNIFER E. MCENEANEY
RONALD F. BERESTKA, JR.
JULIET MACMILLIN LOMPA
MERRILEE C. MILLER
MARISSA N. ACREE

OF COUNSEL
CHRISTINA C. BRINLEY

LAW CLERKS
MARIANNE SPARKS

PARALEGAL
BARBARA BURKHARDT, CCLS

STONE & ASSOCIATES, APC

ATTORNEYS AT LAW

2125 YGNACIO VALLEY ROAD
SUITE 101
WALNUT CREEK, CA 94598

TELEPHONE: (925) 938-1555
FACSIMILE: (925) 938-2937

WWW.STONELAWOFFICE.COM

February 14, 2011

Via Facsimile: 408-289-8127

Timothy D. McMahon, Esq.
CORSIGLIA, MCMAHON & ALLARD
96 N. Third Street, Suite 620
San Jose, CA 95112

Re: *Spilsbury, Thomas v. Target Corporation*
Northern District Of California CASE NO.: CV 09 5955 JW
Our File No.: 30684

Dear Mr. McMahon:

We are in receipt of the Motion to Quash filed on behalf of Thomas Spilsbury, Sr. It seems we did not have an opportunity to properly meet and confer on this matter. When you sent me your meet and confer letter on January 18, 2011, you were aware I was in Minnesota for the deposition of the Target PMK scheduled the following day. Thus, I was unable to respond to your letter. I note that Colette F. Stone, Esq., emailed you on January 20, 2011, wherein she inquired, "I trust you and Juliet met and conferred on the matters in your correspondence that is attached while you were together this week." You responded, "Juliet and I concentrated on the depo at hand, the pending storm in Kansas, and the difficult to decipher ruling of Judge Ware."

Since I had not heard from you or seen a motion to quash, and considering the production date in the original subpoena for Mr. Spilsbury's bank records had passed, I assumed Mr. Spilsbury had withdrawn his objections to the subpoena. We subpoenaed Mr. Spilsbury's bank records for the credit card used to purchase the Chefmate blender in July 2008, because we are interested in discovering other purchases at Target, particularly subsequent purchases. As you well know, Plaintiff produced at his deposition and in response to a Demand for Inspection a blender he identified as "the accident blender" that our investigation revealed was not imported into the United States until November 2008. (This was the subject of our recently withdrawn Motion for Summary Judgment.) We would be willing to withdraw the subject subpoena in exchange for Mr. Spilsbury's

Timothy McMahan, Esq.

Re: *Spilsbury v. Target, et al*

February 14, 2011

Page 2

signed consent authorizing Target to conduct a search of his credit card transactions from June 1, 2008, through July 30, 2009. Enclosed please find a proposed Consent.

Upon receipt of the executed Consent, we will withdraw the subject subpoena. Please let us hear from you by February 18, 2011.

Very truly yours,

STONE & ASSOCIATES

A handwritten signature in cursive script, appearing to read "Juliet MacMillin Lompa".

Juliet MacMillin Lompa

JML:cs

Enclosure

1 COLETTE F. STONE, ESQ. (SBN: 129773)
JULIET MACMILLIN LOMPA, ESQ. (SBN: 140980)
2 MERRILEE C. MILLER, ESQ. (SBN: 157100)
STONE & ASSOCIATES
3 A Professional Corporation
2125 Ygnacio Valley Road, Suite 101
4 Walnut Creek, CA 94598
Telephone: (925) 938-1555
5 Facsimile: (925) 938-2937
Email: jmlompa@stonelawoffice.com

6 Attorneys for Defendants
7 SELECT BRANDS, INC. and
TARGET CORPORATION

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 THOMAS SPILSBURY, JR.

12 Plaintiff,

13 vs.

14 TARGET CORPORATION, SELECT
BRANDS, INC. and DOES 1-25, inclusive,

15 Defendants.
16
17

Case No.: CV 09 5955 JW

**THOMAS SPILSBURY SR.'S
CONSENT FOR TARGET TO
RESEARCH HIS CREDIT CARD
TRANSACTIONS**

18 THOMAS SPILSBURY, SR., father of THOMAS SPILSBURY, JR., hereby grants his
19 consent to TARGET CORPORATION to investigate purchases made with Thomas Spilsbury,
20 Sr.'s credit card, Account No. 5418-2280-0046-6005 during the time period June 1, 2008, through
21 July 30, 2009. The results of this search shall be delivered to STONE & ASSOCIATES, 2125
22 Ygnacio Valley Road, Suite 101, Walnut Creek, CA 94598, and to CORSIGLIA, MCMAHON &
23 ALLARD, 96 N. Third Street, Suite 620, San Jose, CA 95112.

24 DATED: _____

25 _____
26 THOMAS SPILSBURY, SR.
27
28

1 State of California)
2)ss:
County of _____)

3 On _____, 2011, before me, _____, a Notary
4 Public, personally appeared THOMAS SPILSBURY, SR., and proved to me on the basis of
5 satisfactory evidence that he is the person whose name is subscribed to the within instrument, and
6 acknowledged to me that he executed the same in his authorized capacity, and that by his signature on
the instrument he executed the instrument.

7 WITNESS my hand and Official Seal.

8
9 _____
10 Signature of Notary
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TRANSMISSION VERIFICATION REPORT

TIME : 02/14/2011 16:23
NAME : STONE AND ASSOCI
FAX : 9259382937
TEL :
SER.# : BROK2J716695

DATE, TIME 02/14 16:22
FAX NO./NAME 14082898127
DURATION 00:01:09
PAGE(S) 04
RESULT OK
MODE STANDARD
ECM

COLETTE F. STONE
JENNIFER E. MCNEANEY
RONALD F. BERESTKA, JR.
JULIE MACMILLIN LOMPA
MERRILEE C. MILLER
MARISSA N. ACREE

OF COUNSEL
CHRISTINA C. BRINLEY

LAW CLERKS
MARIANNE SPARKS

PARALEGAL
BARBARA BURNHARDT, CCLIS

STONE & ASSOCIATES, APC

ATTORNEYS AT LAW

2125 YGNACIO VALLEY ROAD
SUITE 101
WALNUT CREEK, CA 94598

TELEPHONE: (925) 938-1555
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February 14, 2011

Via Facsimile: 408-289-8127

Timothy D. McMahon, Esq.
CORSIGLIA, MCMAHON & ALLARD
96 N. Third Street, Suite 620
San Jose, CA 95112

Re: *Spilsbury, Thomas v. Target Corporation*
Northern District Of California CASE NO.: CV 09 5955 JW
Our File No.: 30684

Dear Mr. McMahon:

We are in receipt of the Motion to Quash filed on behalf of Thomas Spilsbury, Sr. It seems we did not have an opportunity to properly meet and confer on this matter. When you sent me your meet and confer letter on January 18, 2011, you were aware I was in Minnesota for the deposition of the Target PMK scheduled the following day. Thus, I was unable to respond to your letter. I note that Colette F. Stone, Esq., emailed you on January 20, 2011, wherein she inquired, "I trust you and Juliet met and conferred on the

**CERTIFICATE OF SERVICE
(28 U.S.C. §1746)**

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2125 Ygnacio Valley Road, Suite 101, Walnut Creek, California 94598.

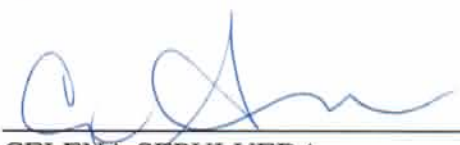
On the date indicated below, at the above referenced business location, I transmitted the document(s) referenced below to the email address of the person designated, or by electronically filing the documents on the Court's ECF system **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO QUASH DEFENDANTS' SUBPOENA FOR THOMAS SPILSBURY'S CREDIT CARD RECORDS; DECLARATION OF JULIET MACMILLIN**

LOMPA:

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Attorney for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct. Executed at Walnut Creek, California on March 14, 2011.


CELENA SEPULVEDA